The Land of the Fee: New Jersey Passes Law That Charges Employers Whose Employees Receive State Medicaid Healthcare Benefits

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New Jersey recently enacted a law which establishes that employers whose employees and their dependents receive health benefits coverage through New Jersey's State Medicaid program must pay an annual fee to the Department of the Treasury's Division of Revenue and Enterprise Services.

On June 30, 2026, Governor Mikie Sherrill signed into law P.L. 2026, c. 23, which establishes that employers with employees enrolled in New Jersey's State Medicaid program will be assessed an annual fee to be paid to the Department of the Treasury's Division of Revenue and Enterprise Services based on the number of employees (and their dependents) receiving such benefits, in an apparent effort to defray the mounting healthcare costs otherwise borne by state taxpayers.

Who Is Covered

The new law covers an "employer," which is defined as any individual, partnership, association, joint stock company, trust, or corporation which (1) employs any person in New Jersey and (2) has, at any point during the prior calendar year, employed 50 or more employees who receive coverage for health benefits through New Jersey's State Medicaid program.

Assessed Fee

A covered employer is obligated to pay an annual fee to the Division of Revenue and Enterprise Services based on the number of employees (plus their dependents) who receive health benefits coverage through the State Medicaid program. The particular amount owed by a covered employer is subject to a tiered fee structure which escalates based on the number of employees receiving coverage. Specifically:

- <u>For employers with at least 50 but fewer than 250 employees</u> who receive State Medicaid health benefits coverage, <u>the fee is $325 for each</u> employee/dependent receiving benefits
- <u>For employers with at least 250 but fewer than 500 employees</u> who receive State Medicaid health benefits, <u>the fee is $525 for each</u> employee/dependent receiving benefits
- <u>For employers with 500 or more employees</u> who receive State Medicaid health benefits coverage, <u>the fee is $725 for each</u> employee/dependent receiving benefits

The number of employees receiving benefits used to calculate the fee is based on the number of employees receiving State Medicaid benefits as of the December 31 preceding the fee assessment notification date, which is to occur on or before March 1 each year. By that March 1 date, the Division of Revenue and Enterprise Services shall inform a covered employer of their obligation to pay the assessed fee, as well as notice of the number of covered employees/dependents upon which the fee assessment is calculated.

Enforcement, Anti-Retaliation, and Penalties

Payments of the assessed fee are due on or before April 15 following employer notification. Covered employers who fail to pay the assessed fee are subject to a penalty of up to $500 per day for each day the fee remains unpaid. The law also permits the Commissioner of the Department of Labor and Workforce Development to assess and collect penalties if the Commissioner determines that a covered employer improperly classifies individuals in an effort to avoid paying the fee.

Employers are prohibited from considering (to the extent they are aware) the fact that a job applicant or employee receives State Medicaid health benefits coverage as a basis to deny employment opportunities. Violation of this anti-retaliation provision is subject to enforcement pursuant to the New Jersey Civil Rights Act. The law also provides that individually identifiable information concerning employees (or their dependents) receiving State Medicaid health benefits coverage is explicitly exempt from disclosure under the Open Public Records Act. The Director of the Division of Revenue and Enterprise Services is charged with preserving the privacy of such information in the agency's possession.

Exceptions

Notwithstanding the above, covered employers are not liable for the fee for any employee or dependent who suffers from:

- A developmental disability
- An intellectual disability
- A permanent physical disability

Also, beginning on July 1, 2027, the following employees are to be excluded from the assessed fee:

- Employees who have been employed for less than 90 days at the time the fee is determined
- Part-time, per diem basis, or temporary employees
- Seasonal employees

Disputes

An employer who receives notification of an assessed fee may dispute the determination by filing an appeal with the Department of Labor and Workforce Development. It is incumbent upon the disputing employer to submit data to demonstrate that the fee was improperly assessed. Relatedly, the law grants the Commissioner of the Department of Labor and Workforce Development discretionary authority to conduct an audit, examination, or investigation of a notified employer's books, records, papers, accounts, and documents.

If the Department determines that the fee assessment was, in fact, improperly imposed, then the assessment can be reversed. However, notably, an employer disputing an assessed fee still is obligated to pay the fee pending disposition of the appeal. Moreover, if the employer fails to pay the assessed fee pending a dispute and is charged the non-payment penalty as a result, *the employer is not entitled to a reimbursement of that non-payment penalty even if the fee eventually is reversed as incorrectly assessed*. Determinations made by the Department of Labor and Workforce Development with respect to employer disputes may be appealed to the Appellate Division of the Superior Court of New Jersey.

Takeaways

Certain aspects of this new fee assessment law, and its enforcement, might be subject to further tinkering. The law calls for the State Treasurer, in consultation with the Commissioners of Labor and Workforce Development and Human Services, to adopt regulations concerning its implementation. In the meantime, and given the current state of the law, employers are encouraged to consider the following measures:

- Assess offered healthcare benefit packages to consider whether current options are sufficient to entice employees away from enrolling in State Medicaid
- Budget for the payment of assessed fees (even if planning to dispute the fee assessment, so as to avoid non-payment penalties which are not refunded even if the fee was improperly assessed)
- Review current employment relationships and independent contractor agreements to ensure proper classification of employees to avoid unexpected fee assessment
- Work with counsel to monitor the new law for any future regulations which impact its implementation and enforcement

Porzio's team of employment attorneys is ready to assist employers in assessing their workforce, health benefits plans, and related processes and procedures, in order to provide strategic guidance to address current and evolving obligations under the new State Medicaid fee assessment law.